

REMARKS

In response to the Office Action mailed May 21, 2010, Applicants hereby request reconsideration of the rejections based upon the claim amendments and arguments submitted herewith. Claims 1-17 were presented for examination, of which all were rejected, with the following issues being raised:

1. Claims 1-17 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter; and
2. Claim 1 was rejected under 35 U.S.C. § 102(a) as anticipated by U.S. Patent No. 3,989,775 to Jack et al. ("Jack").

Following the above amendments to the claims, claims 1 and 3-23 remain pending in the application, with claims 1, 3, and 9 being independent. Various amendments have been made to the claims to clarify the claimed subject matter. New claims 18-23 have been added. Support for new claims 18 and 21 is found in at least paragraph [0059]. Support for new claims 19 and 22 is found at least in paragraph [0074]. Support for new claims 20 and 23 is found at least in paragraph [0076]. No new matter has been added.

Subject Matter Rejections

Claims 1-17 were rejected as being directed non-statutory subject matter. Claim 1 has been amended to recite that "the subject has a pigment applied thereto". Applicants submit that the combination of "the light source" and "the subject with a pigment applied thereto", along with the recited matching between the emission peak and the reflection peak or reflection gap, as compared to an alternate light source, place the subject matter of claim 1 squarely within the requirements of 35 U.S.C. § 101.

New independent claim 3 includes similar limitations to those recited in claim 1, namely "the light source", "the subject with a pigment applied thereto", and matching between the narrow peaks and the reflection gaps as compared to a broadband light source. Applicants therefore submit that claim 3 meets the subject matter requirements of 35 U.S.C. § 101.

Claim 9 has been amended to recite “applying a pigment to a subject” in addition to the steps of illuminating the subject with first and second light sources. The first step represents a transformation of the subject. Thus, the subject matter of claim 9 meets the subject matter requirements of 35 U.S.C. § 101.

All other claims ultimately depend from one of claims 1, 3, or 9, and as such, all these dependent claims also meet the subject matter requirements of 35 U.S.C. § 101.

Anticipation Rejections

Claim 1 was rejected as anticipated by Jack. Anticipation requires that each and every element of the claim be disclosed in the cited reference. Jack does not teach applying the pigment to the subject, nor does it teach illuminating the subject with a first light source with “the emission peak matching one of the reflection peak and the reflection gap”. Jack discloses a beaded material which produces a different appearance based upon the entrance angle of the light into the beads. The difference in entrance angle results in a difference in reflectivity from the beads based upon the spherical form of the beads and the manner in which the light is incident on the beaded material. In Example 8, which is cited to in the Office Action, the difference in color results from the direction of the light incident on the material, with the diffuse sunlight allowing the red material to be seen underneath the beads, and the directional light from the beam under night time conditions producing more internal reflection from the beads, which permit less reflection from the underlying material, thereby resulting in “a predominantly silver retro-reflective glow [...], only a slight pink overtone being detectable.” In other words, the change in appearance is due purely to the reflectivity of the beads—it is not due to “the emission peak matching one of the reflection peak and the reflection gap”. Therefore, Jack does not anticipate amended claim 1.

Claim 3 recites a distinct appearance of the subject “when illuminated by the light source due to a color shift from at least one of the narrow peaks matching one or more of the reflection gaps” as compared to when illuminated by a broadband light source. For the same reason as discussed above with respect to claim 1, Jack does not disclose this feature and does not anticipate amended claim 3.

Claim 9 recites "at least one of the illumination bands overlaps the absorption band of the pigment, thereby visibly changing the appearance of the subject to be different than nominal".

All other claims ultimately depend from one of claims 1, 3, or 9, and as such, all these dependent claims are also not anticipated by Jack. For the same reason as discussed above with respect to claim 1, Jack does not disclose this feature and does not anticipate amended claim 9.

Conclusion

For the foregoing reasons, Applicants request reconsideration of the rejections.

The undersigned believes no extensions or fees are due with this response. However, if an extension is needed or a fee is due, please consider this a request therefor and charge Deposit Account No. 03-2775, under Order No. 30075-00004, from which the undersigned is authorized to draw.

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Respectfully submitted,

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